

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

JAMES LEONDARD RICALLS,
Plaintiff,
v.
P. ANDREW,
Defendant.

No. 2:23-cv-00771-EFB (PC)

ORDER AND FINDINGS AND
RECOMMENDATIONS

Plaintiff, a state prisoner, proceeds without counsel in an action brought under 42 U.S.C. § 1983. On June 12, 2023, the court screened plaintiff's amended complaint pursuant to 28 U.S.C. § 1915A and dismissed it with leave to amend. ECF No. 4. The court explained the deficiencies therein and granted plaintiff thirty days in which to file an amended complaint to cure the deficiencies. *Id.* The screening order warned plaintiff that failure to comply would result in a recommendation that this action be dismissed. Rather than file the amended complaint, plaintiff filed a motion for leave to amend. The court, on September 1, 2023, informed plaintiff he had already been granted leave to amend and directed plaintiff to file an amended complaint within 30 days. ECF No. 8. The time for doing so has now passed and plaintiff has still not filed an amended complaint or otherwise responded to the court's order. Thus, it appears that plaintiff is unable or unwilling to cure the defects in the complaint.

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1 Accordingly, it is ORDERED that the Clerk of Court randomly assign a district judge to
2 this action.

3 It is further RECOMMENDED that this action be DISMISSED without prejudice for the
4 reasons set forth in the June 12, 2023 screening order (ECF No. 4).

5 These findings and recommendations are submitted to the United States District Judge
6 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
7 after being served with these findings and recommendations, any party may file written
8 objections with the court and serve a copy on all parties. Such a document should be captioned
9 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the
10 objections shall be served and filed within fourteen days after service of the objections. The
11 parties are advised that failure to file objections within the specified time may waive the right to
12 appeal the District Court’s order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 1998); *Martinez*
13 *v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

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15 Dated: November 28, 2023


EDMUND F. BRENNAN
UNITED STATES MAGISTRATE JUDGE